

INSTRUCTIONS FOR FILLING OUT FORM

PURPOSE. This form is to be used when the court has ordered that you have physical or primary custody of your child(ren) and the opposing party is denying you custody in accordance with the court order.

FORMS INVOLVED. The first form is a **Motion for Order to Show Cause**. The second form is an affidavit that you need to attach to the Motion. You will need to fill in the necessary information with help from the instructions below and then file the forms with the appropriate court. Once the judge reads your Motion and Affidavit and finds grounds for a show cause hearing the court will issue a show cause order requiring defendant to appear and show cause why they should not be held in contempt of court for failure to give you custody of the child(ren) and why they should not turn the child(ren) over to you. There may be a service fee to have the other party personally served with the order to show cause. Check with your Tribal Court.

BURDEN OF PROOF. You as the moving party have the burden of showing the following to the court in your affidavit for **Motion for Order to Show Cause**:

1. That a child custody order has been issued by the court where you are filing your motion.
2. That the other party had knowledge of the child custody order.
3. That the other party has the ability to comply with the custody order.
4. That the other party willfully disobeyed the custody order.

Once the judge reads your Motion and Affidavit and finds grounds for a show cause hearing the court will issue a show cause order requiring defendant to appear and show cause why they should not be held in contempt of court for failure to obey the custody order and why they should not turn the child(ren) over to you. There may be a service fee to have the other party personally served with the order to show cause. Check with your Tribal Court. At the hearing the burden shifts the opposing party to prove by a preponderance of the evidence that a visitation order does not exist, that they did not have knowledge of the order, that they do not have the ability to comply with the visitation order, or that they did not willfully disobey the visitation order. If they are not able to do so the court should find them in contempt.

In a typical civil case a party has the burden of proving a claim by a preponderance of the evidence. Proving something by a preponderance of the evidence means evidence with greater weight or that is more convincing than the evidence of the opposing party(s).

INSTRUCTIONS FOR FILLING OUT THE FORM. To fill out this form follow these instructions. The numbers to each instruction below is the number on the blank line on the form where the information for that number needs to be inserted on the form. You can print this page in its entirety or you can scroll down to the Motion form and if you scroll down farther you will find the affidavit. There will be a blank screen between these instructions and the forms and

between the forms so keep scrolling or just copy this page in its entirety.

Instructions for filling out the motion:

(1) on this line insert the name of the tribal court. For example, if you are filing this claim on the Rosebud reservation you would insert Rosebud Sioux on this line.

(2) on this line insert the name of the reservation where the court is located.

(3) on this line insert the community where the court is located in which you are filing these forms.

(4) on this line insert the name of the plaintiff from the court order.

(5) on this line insert the name of the defendant from the court order.

(6) on this line insert your name.

(7) insert the other party's name.

(8) on this line insert the day.

(9) on this line insert the month.

(10) on this line insert the year.

(11) on this line insert your name by signing.

(1) _____ TRIBAL COURT)
(2) _____ RESERVATION)SS
(3) _____, SOUTH DAKOTA)

IN CIVIL COURT

(4) _____

DOCKET _____

PLAINTIFF(S)

MOTION FOR ORDER TO
SHOW CAUSE

VS

(5) _____

DEFENDANT(S)

Comes now (6) _____ and moves this Court for the issuance of an order for (7) _____ to show cause why (s)he should not be held in contempt of court and sanctioned (including being jailed) for failure to obey the custody order and why the children should not be returned to (6) _____. In support of this motion is an attached affidavit incorporated into this motion as if fully set out herein.

Wherefore, the undersigned prays this court to issue an order for (7) _____ to show cause why they should not be held in contempt of court and why sanctions should not be imposed by the court.

Dated this (8) _____ day of (9) _____, (10) _____.

(11) _____
Plaintiff/Defendant

Instructions for filling out the affidavit:

- (1) on this line insert the name of the tribal court. For example, if you are filing this claim on the Rosebud reservation you would insert Rosebud Sioux on this line.
- (2) on this line insert the name of the reservation where the court is located.
- (3) on this line insert the community where the court is located in which you are filing these forms.
- (4) on this line insert the name of the plaintiff from the court order.
- (5) on this line insert the name of the defendant from the court order.
- (6) on this line insert your name.
- (7) insert the date the child custody order was signed by the judge
- (8) insert the other party's name
- (9) explain how the opposing party denied you custody of your child(ren). Provide dates, times and details.
- (10) on this line insert the day.
- (11) on this line insert the month.
- (12) on this line insert the year.
- (13) on this line insert your name by signing.

Dated this (10)____ day of (11)_____, (12)_____.

(13)_____

Plaintiff/Defendant

Sworn and subscribed to before me this _____ day of _____, _____.

Notary Public

My commission expires:

(SEAL)